

No. 2482

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# United States Circuit Court of Appeals

For the Ninth Circuit

CHAN KAM,

*Appellant,*

vs.

THE UNITED STATES OF AMERICA,

*Appellee.*

In the Matter of the Application of CHAN  
KAM, alias CHAM KAM, for a Writ of  
Habeas Corpus.

## REPLY BRIEF FOR APPELLEE

JOHN W. PRESTON,  
United States Attorney,

CASPER A. ORNBAUN,  
Asst. United States Attorney,  
*Attorneys for Appellee.*

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FRANK D. MONCKTON, Clerk.

By....., Deputy Clerk.



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### Facts

Since counsel for appellant has made an incomplete statement of the facts in this case, appellee desires to supplement said statement by calling attention to further facts constituting a part of the record in this case, and set forth in appellant's Petition for a Writ of Habeas Corpus, as follows:

On the 12th day of August, 1913, a warrant was issued by the United States Department of Labor, for the arrest of appellant, Chan Kam, alias Cham Kam, for being "in the United States in violation of the act of Congress approved February 20, 1907, amended by the act of Congress approved March 27,

1910," in that it appeared "that the said alien is a prostitute and has been found an inmate of a house of prostitution and practicing prostitution, subsequent to her entry into the United States."

An arrest was made of said alien on the 26th day of August, 1913, at Dinuba, California, and a first hearing held at the county jail at Fresno, Fresno County, California, on the 27th day of August, 1913, before Chinese and Immigrant Inspector W. A. Brazie.

The record shows that at the time of the first hearing said alien was allowed to inspect the warrant of arrest and all of the evidence upon which said warrant was based, and advised of her right to be represented by counsel; that said alien availed herself of her right to counsel and had one E. A. Williams, an attorney, present at all subsequent hearings.

On the 28th day of August, 1913, the record, as disclosed in appellant's petition for a writ of habeas corpus, shows that Examining Inspector W. A. Brazie gave said alien and her counsel ample opportunity to inspect and meet any and all evidence in the hands of the Government's Agents, and in this connection appellee quotes a statement from Examining Inspector W. A. Brazie as follows:

"Mr. Williams: The complete record in this case, so far as it has proceeded, is handed you for inspection; and you are entitled to submit any evidence in rebuttal to that presented by

the Government. Are you ready to proceed with the hearing of the case?"

to which Attorney Williams replied:

"I desire to look into the matter and have witnesses for the alien. I will ask that this case be continued until Monday, the 1st day of September, 1913, at which time I will have our witnesses present."

The hearing was continued as requested by the alien's counsel and said counsel was present at all other hearings and given ample opportunity to examine and overcome by rebuttal testimony or otherwise all of the evidence submitted and relied upon by the Government.

### **The Evidence Submitted**

The testimony upon which the Government relies and which constitutes a part of the record in this case, the same being fully set forth in the appellant's Petition for a Writ of Habeas Corpus, is as follows:

Appellant, Chan Kam, alias Cham Kam, being first duly sworn, testified through an interpreter as follows:

"My name is Chan Kam; I am 22 years of age; subject of China; of the Chinese race; embarked for the United States from Hong Kong, China, and landed at the Port of San Francisco, California, x. S. T. 1-3-19 (January 23, 1909); my destination at that time was San Francisco, California. The names and addresses of my family in the United States and abroad are as follows:

My husband, Ho Bat, living at Dinuba, California; and I have no other relatives either in the United States or in China.



Q. Where were you born?

A. In Hong Kong, China.

Q. Have you ever been back to China since you came to the United States?

A. Never been back.

Q. Who did you come to meet when you came to the United States?

A. My first husband, Low You. He afterwards went back to China and died; then I married Ho Bat.

Q. What have you been doing since you married Ho Bat?

A. Housewife.

Q. Were you practicing prostitution in Dinuba, California, about one month since?

A. No.

Q. You were arrested on that charge by the city marshal and constable were you not?

A. Yes.

Q. Were you guilty of that charge?

A. No.

Q. When you were arrested at that time you were found in bed with a Chinaman who was not your husband?

A. No; I was standing beside the bed, and the man was in the bed.

Q. Whose bed was this

A. Mine.

Q. Whose house was it?

A. Mine.

Q. Where was your husband when this happened?

A. I don't know; out on the street, I suppose.

Q. What was this Chinaman doing in your bed?

A. Waiting for my husband.

Q. What time was it when you and this man were discovered by the officers in your room, and he in your bed?

A. Little after 9 o'clock at night.

Q. Was this Chinaman the only man who ever occupied that bed with you?

A. No; my husband occupied it with me also.

Q. What was the reputation of the house where you lived in Dinuba?

A. I don't know what its reputation was.

Q. Was it known as a house of prostitution?

A. I don't know.

Q. Was it a house of prostitution?

A. I don't know.

Q. What did you use the house for?

A. To live in.

Q. Did you practice prostitution in the house or any other place in Dinuba?

A. No.

Q. What was the name of the man who was arrested with you in that room at Dinuba?

A. Jew Lin; he was a friend of my husband.

Q. Were you in the habit of allowing friends of your husband to occupy your bed in your bedroom?

A. Yes, when they wanted to.

Q. What did you use the napkins, towels, wash basin, vaseline and other paraphernalia of a prostitute for?

A. I used the napkins to wipe my hands, and the towels for the monthly periods, and the basin to wash my feet.

Q. What was the vaseline for?

A. Clean my hands.

Q. All of these articles with the exception of the wash basin were found in your bed. There were several hundred of the paper napkins.

A. I had a right to place my property in my bed.

Q. Do you know R. L. Hill, city marshal of Dinuba?

A. No.

Q. I will read you what he says about your practicing prostitution and the reputation of your house. Is he telling the truth?

A. I was not practicing prostitution there, and I don't know what was the reputation of the house.

Q. Are you acquainted with J. H. Farrar, constable at Dinuba?

A. No.

Q. I will read you what he says about your case. Is he telling the truth?

A. I don't know, but I was not practicing prostitution.

Q. The two men whose statements were just read you were the men who arrested you and Jew Lin, at Dinuba. Do you know them?

A. No.

Q. Both officers swore to the statements, and they say you were in bed with Jew Lin when you were arrested.

A. That is not true; I was standing by the side of the bed.

Q. Had you been in the bed with this man before the officers came into the room?

A. No.



Q. What were you doing in the room, with the door closed, at that time of the night and a strange man in your bed, with your husband absent?

A. It was my room and bed, and Jew Lin was in bed waiting for my husband.

Q. Did you ever give your husband, Ho Bat, any money that you made by prostitution?

A. No; I never practiced prostitution.

Q. Who did that little bank which was in your suitcase belong to

A. That belonged to Ho Bat, my husband.

Q. Did you give him any of the money that was in that bank?

A. No. He gave me money.

Q. Who did the cooking at the house where you were living?

A. A Chinaman did it.

Q. What did you do about the house?

A. Nothing; just living there.

Q. Have you told the truth all the way through this examination?

A. Yes.

Q. Have you anything else to say?

A. No."

In the cross-examination of Ho Bat, the alleged husband, by Inspector Brazie, questions were asked and answers given as follows:

Q. Were you at this house all the time it was occupied by Chan Kam?

A. Yes.

Q. Continuously?

A. Sometimes I would be away for a short time.

Q. Were you there when Jew Lin was found in bed with Chan Kam?

A. That time I go out.

Q. Then you were not in the house all of the time she was there?

A. Most of the time I stay at home; sometimes I go out on the street.

Q. Then if you were not present all of the time you don't know whether other Chinese, Japanese and Americans visited Chan Kam at that house or not?

A. I believe nobody got into the room.

Q. But you don't know they did not?

A. No.

Q. What is the character of that house?

A. In the basement there is a hop joint entering into it by the sidewalk. There is no gambling joint there.

Q. When the officers got the opium outfits, etc., on the day Chan Kam was arrested they did not enter the opium joint by the sidewalk?

A. The regular way is to go by the sidewalk. The back way is by the kitchen.

Q. The room next to your room, and through which you claim it is necessary to go is a gambling joint?

A. No.

Q. What are all those tables and Chinese gambling paraphernalia doing in that room?

A. I don't know what they used them for.

Q. What were you doing at Dinuba with this woman?

A. I try to get into the fruit business.

Q. You are the same Ho Bat who took Chan Kam to Woodland, California, in May, 1912?

A. Yes, sir.

Q. You were not married to her then?

A. Not yet.

Q. She was arrested at that time on a charge of practicing prostitution?

A. Yes.

Q. You took her around the country a good deal before you married her did you not?

A. Not much.

Q. You are a Chinaman?

A. Yes, sir."

Jew Lin, who was found in appellant's room at the time of her arrest, testifying in her behalf, stated that said appellant was not near the bed during any of the time he was in her room. This statement is in direct contradiction of appellant's testimony for she said, "I was standing *by the side* of the bed."

The errors assigned by appellant are to the effect that said appellant was given an unfair hearing and that no evidence was submitted sufficient to support the charges of prostitution.

### Argument

The Government agrees with the appellant's counsel in his statement of the principle of law that,

"When by abuse of the discretion, or the arbitrary action of the inspector, or other executive officer, or without a full and fair hearing, an alien is deprived of his liberty, or is about to be deported, the power is conferred and the duty is imposed upon the Courts of the United States to issue a Writ of Habeas Corpus and relieve him."

The cases cited by counsel in support of this principle are well known in Immigration law, and are relied upon by the Bureau of Immigration as supporting the law under which the Bureau operates. In the *Japanese Immigrant case* 189 U. S. 86, for instance, Justice Harlan said:

“Now it has been well settled that the power to exclude or expel aliens belonged to the political department of the Government, and that the order of an executive officer invested with the power to determine finally the facts upon which an alien’s right to enter this country, or remain in it, depended, was due process of law, and no other tribunal, unless expressly authorized to do so, was at liberty to re-examine the evidence on which he acted, or to controvert its sufficiency.”

“Due process of law” referred to in appellant’s first specification of errors, does not require a judicial trial. That the decision may be intrusted to an executive officer, and that his decision was due process of law, was affirmed in.

*Nishimura Ekin vs. U. S.*, 142 U. S. 651;

*Fong Yue Ting vs. U. S.*, 149 U. S. 698;

*U. S. vs. Ju Toy*, 198 U. S. 253;

*Zakonaite vs. Wolf*, 226 U. S. 272.

And when a statute gives a discretionary power to an officer to be exercised by him upon his own opinion of certain facts, he is the sole and exclusive judge of the existence of those facts.

*Nishimura Ekin, supra*;

*U. S. vs. Ju Toy*, 198 U. S. 253;

See *Lung vs. Patterson*, 186 U. S. 170.



And the findings of said officer are final and conclusive.

*Healy vs. Backus*, 221 Fed. 358, 364;

*Tang Tun vs. Edsell*, 223 U. S. 673;

*Low Wah Suey vs. Backus*, 225 U. S. 460;

*Chin Yow vs. U. S.*, 208 U. S. 8.

So long as there are facts to support the findings of the officer Courts will not entertain jurisdiction.

*White vs. Gregory*, 213 Fed. 768;

*U. S. vs. Williams*, 200 Fed. 538.

And a Court will not inquire into the sufficiency of the probative facts, or consider the reasons for the conclusions reached by the officers.

*Healy vs. Backus*, *supra*;

*White vs. Gregory*, *supra*;

*Lee Lung vs. Patterson*, 186 U. S. 170.

In *Lee Lung vs. Patterson*, *supra*, it was said by the Court:

“But the jurisdiction is given to the collector over the right of the alien to land, and necessarily jurisdiction is given to pass on the evidence presented to establish that right. He may determine the validity of the evidence, or receive testimony to controvert it, and *we cannot assent to the proposition that an officer or tribunal invested with jurisdiction of a matter, loses that jurisdiction by not giving sufficient weight to evidence or by rejecting proper evidence, or by admitting that which is improper.*”

This brings us to a consideration of the question of whether or not the Government was unfair in the hearings conducted in this case. The record



shows that appellant was allowed to inspect the warrant of arrest and all of the evidence upon which it was issued and advised of her right to be represented by counsel; that appellant had one E. A. Williams, an attorney, represent her, and that he was given the complete record in the case, so far as it had proceeded, and advised by the Examining Inspector of the alien's right to submit any evidence she desired to rebut the evidence offered by the Government. The hearings in this case were manifestly fair, and this brings the Government to a consideration of the last error assigned by appellant, viz:

That there was no evidence tending to support the charge that appellant was a prostitute.

In answer to this the Government directs attention to that portion of appellant's testimony where the following questions were asked and answers given:

“Q. When you were arrested at that time you were found in bed with a Chinaman who was not your husband?

A. No, I was standing beside the bed, and the man was in the bed.

Q. Whose bed was this?

A. Mine.

Q. Whose house was it?

A. Mine.

Q. Where was your husband when this happened?

A. I don't know; out on the street, I suppose.

Q. What was this Chinaman doing in your bed?

A. Waiting for my husband.

Q. What time was it when you and this man were discovered by the officers in your room, and in your bed?

A. Little after 9 o'clock at night.

Q. Was this Chinaman the only man who ever occupied that bed with you?

A. No. My husband occupied it with me also.

\* \* \* \* \*

Q. What did you use the napkins, towels, wash basin, vaseline and other pharaphernalia of a prostitute for?

A. I used the napkins to wipe my hands, and the towels for my monthly periods, and the basin to wash my feet.

Q. What was the vaseline for?

A. Clean my hands.

Q. All of these articles with the exception of the wash basin were found in your bed. There were several hundred of the paper napkins?

A. I had a right to place my property in my bed.

\* \* \* \* \*

Q. What were you doing in the room, with the door closed, at that time of the night and a strange man in your bed, with your husband absent

A. It was my room and bed, and Jew Lin was in bed waiting for my husband."

One of the significant facts to which attention is directed is that the appellant stated positively and repeatedly that *Jew Lin* was in her bed when she was first examined by Inspector Brazie, and before

she had employed counsel, but as soon as counsel was employed, appellant stated that Jew Lin was sitting on her bed.

Since appellant was given the benefit of an interpreter, and every opportunity given her to state the truth, it would be folly for her to try to avoid her previous statements. The various forms in which the questions were asked and the very positive way in which they were answered by appellant shows that she understood both questions and answers. And it will be noted that counsel in his well prepared brief makes no comment on appellant's inconsistent testimony and does not even refer to the paraphernalia found in her bed at the time of the arrest.

It will be recalled that Ho Bat, the alleged husband, stated that appellant is the same woman whom he took to Woodland, California, in May 1912, before they were married, and that she, the appellant, was arrested at that time on a charge of practicing prostitution.

Under the circumstances of this case and in the face of the testimony herein set forth, can it be said that there was unfairness on the part of our Government, or that there was no evidence to support the charge that appellant was a prostitute?

Counsel for appellant refers to two affidavits of certain officers, and endeavors to impress upon the Court that the Government considered certain letters in arriving at its decision to deport said applicant. Counsel further states that, "During the hearing,

counsel for appellant requested the inspector to call them (referring to the officers) in order that the counsel for appellant might examine them.”

The Government submits that there is nothing in the record of this case to show that the decision of the Immigration officials was based upon affidavits or letters of officers; or that any demand was made upon said Immigration officials to call said officers in order that appellant’s counsel might examine them. Had such a demand been made the record, or the affidavits submitted in behalf of appellant, should show such a demand or request. Appellant’s position is not sound and unsupported by the law.

*Low Wah Suey vs. Backus*, 225 U. S. 460.

In this case the Government contends that appellant had every opportunity to fairly present her defense against deportation, and further, that there is not only *some* evidence (which is all the law requires in deportation proceedings) but that there is ample and conclusive evidence that said appellant was engaged in prostitution in the United States.

It is therefore earnestly requested that the decision of the lower Court be sustained.

Dated San Francisco, Cal., February 6, 1916.

Respectfully submitted,

JOHN W. PRESTON,

United States Attorney,

CASPER A. ORNBAUN,

Assist. United States Attorney,

*Attorneys for Appellee.*

